IN THE

Supreme Court of the United States

Supreme Court, U. S.
FILED
MAY 23 1978
MICHAEL RODAK, JR., CLERK

October Term 1977

No. 771579

REV. DIANNE FENNELL,

Appellant,

vs.

ROSALIE BUTLER, Councilwoman; DONALD D. WOZNIAK; HARRIET LANSING, City Attorney; PHILIP B. BYRNE, Deputy City Attorney; JAMES M. CAMPBELL; and the MINNESOTA STATE BOARD OF MEDICAL EXAMINERS,

Appellees.

ON APPEAL FROM THE UNTED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA AND ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MOTION TO DISMISS APPEAL OR AFFIRM JUDGMENT BELOW AND MEMORANDUM BY APPELLEE MINNESOTA STATE BOARD OF MEDICAL EXAMINERS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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May, 1978

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Appellees.

ON APPEAL FROM THE UNTED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA AND ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MOTION TO DISMISS OR AFFIRM

Pursuant to Rule 16 of the Rules of the Supreme Court for the United States, appellee Minnesota State Board of Medical Examiners (hereinafter "Board") moves that the appeal herein be dismissed or, in the alternative, that the final judgment and decree of the United States District Court for the District of Minnesota be affirmed on the following grounds:

A. Direct appeal to the Court is unavailable as to the question sought to be reviewed.

B. It is manifest that the question presented is so unsubstantial as not to need further argument.

C. The judgment at issue was obviously correct.

I

STATEMENT

A. Question Presented And State Statute Involved.

Although Rev. Dianne Fennell (hereinafter "appellant") has not clearly delineated the procedural posture of this case, the Board interprets appellant's present action as a direct appeal from the final judgment and decree entered on March 27, 1978, by a one-judge federal district court dismissing an action by appellant in which she sought to compel the Board to issue a permanent massage license to her. Additionally, in what appears to be a separate but concurrent attempt to seek the Court's assumption of jurisdiction, appellant is also petitioning the Court for writ of certiorari.

In both instances, the sole question raised with respect to the Board has been set forth by appellant as follows:

> Should a U.S. District Judge, be required to compel an assistant Minnesota Attorney General and a State agency, the "Minnesota State Board of Medical Examiners," to obey a State statute M.S.A. 147.171, and issue to Appellant a permanent massage license?

(*Sic.*) Appellant's Statement as to Jurisdiction at 5; Petition for Writ of Certiorari at 3.

In its entirety, the state statute in question provides:

> Any person who was licensed under Laws 1935, Chapter 245 may apply to the board of medical examiners for a permanent license. The board shall grant the request if it is satisfied that the applicant previously held a license under Laws 1935, Chapter 245.

Minn. Stat. § 147.171 (1976).

B. Proceedings Below.

On July 25, 1977, appellant filed a *pro se* summons and complaint in the United States District Court, District of Minnesota, Third Division, seeking a declaratory judgment, injunctive relief and damages relating to her practice of massage and operation of a sauna in St. Paul, Minnesota.[1] The complaint alleged that the Board improperly refused to issue her a permanent massage license.

On September 16, 1977, appellant moved the District Court for a preliminary injunction to require the Board's issuance of the license. This motion was denied on September 23, 1977 (Alsop, J.).

Thereupon, on September 29, 1977, appellant noticed an appeal of the matter to the United States Court of Appeals for the Eighth Circuit. In an order filed on February 6, 1978, the Court of Appeals vacated the District Court's order, remanded the case for further proceedings consistent with alternative criteria for preliminary injunctions, and urged the case's consolidation with another. Upon reconsideration of the matter, on March 10, 1978, the District Court granted appellant's motion for a preliminary injunction as to all appellees except the Board.

Shortly thereafter, on March 27, 1978, the District Court granted a pending motion by the Board ordering the dismissal of appellant's action for failure to state a claim upon which relief can be granted and entered final judgment in the matter.[2] On or about April 19, 1978, appellant noticed an appeal of the District Court's order to the Eighth Circuit Court of Appeals.[3] Despite a number of ambiguities in her jurisdictional statement, it is believed that this is the same order for which she now seeks the Court's review by appeal and for which she has simultaneously filed a petition for writ of certiorari. The matter also remains before the Eighth Circuit where it has been docketed[4] but not yet briefed by appellant.

[1] No state administrative or state court proceedings preceded the filing of the federal district court action.
[2] A-1-3.
[3] A-4, 5.

II

ARGUMENT SUPPORTING MOTION

A. The Court Is Without Direct Appeal Jurisdiction From The District Court.

This Court's jurisdiction over direct appeals from federal district courts is confined to certain types of cases under limited circumstances, to-wit: (1) cases which involve the constitutionality of federal statutes (28 U.S.C. §1252); (2) criminal matters presenting judgments adverse to the United States (18 U.S.C. § 3731); (3) civil actions required to be heard by three judges (28 U.S.C. §1253); and (4) actions brought by the United States to enforce specific laws such as the Interstate Commerce Act (49 U.S.C. § 45). As this appeal relates instead to a federal district court ruling pertaining to the actions of a state agency under a state statute,[5] it is clear that the instant matter does not lie within this Court's appellate jurisdiction.

Moreover, appellant has made no attempt to indicate how her appeal might reasonably relate to the Court's direct appeal jurisdiction. Appellant's jurisdictional statement simply asserts:

[4] A-5, 6.
[5] Appellant's Statement as to Jurisdiction at 5.

> The jurisdiction of this Court is invoked under Title 28 of the U.S. Code Sections 2201 and 2202: 1331, 1343 (1-4), Title 42 of the U.S. Code Sections 1981 thru 1995.

(*Sic.*) Appellant's Statement as to Jurisdiction at 2. Nothing further is offered which might be construed as explaining the present jurisdictional application of these references to declaratory judgments, district court jurisdiction, and to parts of the Civil Rights Act.

Based on the foregoing, it is apparent that jurisdiction is lacking and that the appeal should be dismissed.

B. This Case Does Not Present A Substantial Federal Question.

As previously noted, the sole question presented by appellant is whether the Board's refusal to issue a permanent massage license to her has violated Minn. Stat. §147.171 (1976). It is obvious, however, that appellant's objections to a particular construction of this state law, or to a certain course of conduct by state officials under it, do not require the Court's appellate review. Appellant's allegations are merely conclusional and fail to indicate how, if at all, the Board's denial of her request for permanent licensure might be regarded as a violation of the United States Constitution or federal law. Under such circumstances, the question presented must be viewed not only as unsubstantial but non-federal in nature and patently insufficient to invoke the Court's jurisdiction. *See, e.g., Arbuckle v. Blackburn,* 191 U.S. 405 (1903); *Powell v. Alabama,* 287 U.S. 45 (1932); *Moore v. Kusper,* 465 F.2d 256 (7th Cir. 1972); *Baker v. McGinnis,* 286 F. Supp. 280 (D.C. N.Y. 1968).

C. The Decision Of The District Court Is Plainly Correct.

Appellant's contention that the Board has violated state law, Minn. Stat. § 147.171 (1976), by not issuing a permanent massage license to her is founded on the wholly invalid assumption that the Board possesses the authority to grant her such a license. Under section 147.171, the Board's licensure authority over masseuses and masseurs is expressly limited to those persons previously licensed under Minn. Laws 1935, Ch. 245. Appellant was never so licensed.

Appellant was registered without examination by the Board from 1970 through 1974, but her status as a registrant did not commence until some three years after the Board's massage examination and licensing authority under Laws 1935, Chapter 245, was removed by the state legislature.[6] Furthermore, appellant neither now offers nor did she offer in the proceedings below any evidence or legal argument to refute the foregoing.

Accordingly, as a matter of simple statutory construction, it is clear that the District Court's dismissal of appellant's action for failure to state a claim upon which relief can be granted was correct.

---

[6] An affidavit with exhibit attachments submitted in preliminary injunction proceedings below regarding the history of appellant's status with the Board appears at A-7-14. Minnesota Laws 1935, Chapter 245, is at A-15-16. Minnesota Laws 1967, ch. 845 § 4, which discontinued the Board's licensing authority under Laws 1935 is at A-16-17.

III

MEMORANDUM OPPOSING CERTIORARI

Previous reference has been made to the identity of the questions presented by appellant on appeal and in her petition for a writ of certiorari. *Supra* at 3. In essence, she is seeking the Court's review of a final judgment of March 27, 1978, entered by the United States District Court for the District of Minnesota dismissing an action by appellant against the Board, a state agency, relative to the interpretation of a state massage licensing statute (Minn. Stat. §147.171 (1976)). No conflict of court decisions is presented. Additionally, appellant has appealed the same matter to the United States Court of Appeals for the Eighth Circuit where it is presently pending.[7]

Without more, the foregoing facts clearly require denial of appellant's petition for a writ of certiorari. That the instant question of a state statute's interpretation not involving a conflict of decisions fails to present an important federal question, or a federal question of any nature, seems obvious. Moreover, the present pendency of this same matter in the Court of Appeals quite plainly forecloses a grant of the requested writ. Under Rule 20 of the Court, deviation from normal appellate processes is justified only upon a showing that the case is of such imperative public importance that the Court's immediate decision is required. No such showing has been or can be made in this case. Indeed, appellant's petition offers no indication that the question she presents may affect or be important to anyone except the litigants. Finally, as has previously been discussed, it cannot reasonably be doubted that the decision of the District Court in this matter was correct. On its face, Minn. Stat. §147.171 precludes appellant's licensure by the Board.

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[7] A-4-6.

IV

CONCLUSION

For the foregoing reasons, appellee Board moves the Court to dismiss this appeal or, in the alternative, to affirm the judgment entered by the District Court. Further, the Board urges the Court to deny this petition for writ of certiorari.

Respectfully submitted,

WARREN SPANNAUS
Attorney General
State of Minnesota
RICHARD B. ALLYN
Solicitor General
ROBERT T. HOLLEY
Special Assistant
Attorney General
232 Minnesota Health
Dept. Bldg.
717 Delaware Street Southeast
Minneapolis, Minnesota 55440
Telephone: (612) 296-5518
Attorneys for Appellee,
Minnesota State Board of
Medical Examiners

APPENDIX

UNITED STATES DISTRICT COURT

District of Minnesota — Third Division

REV. DIANNE FENNELL,

Plaintiff,

vs.

ROSALIE BUTLER, Councilwoman; HARRIET LANSING, City Attorney; PHILIP B. BYRNE, Deputy City Attorney; and THE MINNESOTA STATE BOARD OF MEDICAL EXAMINERS,

Defendants.

MEMORANDUM ORDER

Rev. DIANNE FENNELL, St. Paul, Minnesota, appeared pro se.

Warren Spannaus, Attorney General, State of Minnesota, by ROBERT T. HOLLEY, Esq., Special Assistant Attorney General, St. Paul, Minnesota, appeared for defendant Minnesota State Board of Medical Examiners.

Harriet Lansing, St. Paul City Attorney, by BERYL M. NORD, Esq., Assistant St. Paul City Attorney, St. Paul, Minnesota, appeared for all other defendants.

This matter comes before the court on the motion of the defendant Minnesota State Board of Medical Examiners (Board) to dismiss.

The only relief which the plaintiff seeks from the Board is the issuance to her of a permanent license to practice massage.

Minn. Stat. § 147.171 authorizes the Board to issue such permanent licenses only to persons licensed pursuant to Laws 1935, Chapter 245. The plaintiff does not allege that she was ever licensed by the Board to practice massage.[1] Therefore, she does not state a claim upon which relief could be granted.

Moreover, the Board's refusal to issue a permanent license to the plaintiff denies her no right or privilege. It is not necessary that a person who practices massage in the State of Minnesota hold a license issued by the Board. If the Board were to issue a permanent license to the plaintiff, she would still be required to comply with any applicable provisions of an ordinance adopted by the council of any city in which she wishes to practice massage. *Cf. Mangold Midwest Co. v. Village of Richfield*, 274 Minn. 347, 143 N.W.2d 813 (1966). Therefore, the Board's actions, even if they were to be wrongful, would not deny the plaintiff either due process or equal protection.

Upon the foregoing,

IT IS ORDERED That the motion of the defendant Minnesota State Board of Medical Examiners to dismiss for failure to state a claim be and hereby is granted, and the above-entitled action is dismissed as to the Minnesota State Board of Medical Examiners.

IT IS FURTHER ORDERED That, based upon the court's express determination that there is no just reason for delay, the Clerk shall enter judgment accordingly.

Dated: March 27, 1978.

DONALD D. ALSOP
United States District Judge

---

[1] Previously, the Board did accept the plaintiff's application for *registration* to practice massage. However, that registration does not make the plaintiff eligible for permanent licensing.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

No. Civil 3-77-338 Civil

REV. DIANNE FENNELL,

Plaintiff,

vs.

ROSALIE BUTLER et al.,

Defendant.

You are hereby notified that in the above-entitled case on the 27th day of March, 1978, filed and entered Memorandum Order (Alsop-J 3-27-78) that motion of Deft. Minnesota State Board of Medical Examiners to dismiss for failure to state a claim be and hereby is granted and action is dismissed as to the Minnesota State Board of Medical Examiners. Further ordered that, based upon the Court's express determination that there is no just reason for delay, the Clerk shall enter judgment accordingly.

BERNADINE L. BROWN
Deputy Clerk

JUDGMENT ENTERED

TO: Rev. Dianne Fennell, 1612 Randolph Ave., St. Paul, Minnesota 55105; Beryl A. Nord, Asst. City Atotrney, 647 City Hall & Court House, St. Paul, Minnesota 55102; Robert M. Mahoney, Geraghty, O'Loughlin & Kenney, 707 Degree of Honor Bldg., St. Paul, Mn. 55101; Robert T. Holley, Special Assistant Attorney General, 232 Minnesota Health Department Bldg., 717 Delaware Street S.E., Minneapolis, Mn. 55440.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION
File No. 3-77-338
CIV
REV. DIANNE FENNELL,

Plaintiff,

vs.

ROSALIE BUTLER, Councilwoman; DONALD D. WOZNIAK; HARRIET LANSING, City Attorney; PHILIP B. BYRNE, Deputy City Attorney; JAMES M. CAMPBELL; and THE MINNESOTA STATE BOARD OF MEDICAL EXAMINERS,

Defendants.

NOTICE OF APPEAL

TO: Beryl A. Nord, at 647 City Hall & Court House, St. Paul, Minn. 55102. Attorney for defendants, Butler, Lansing, and Bryne. Robert M. Mahoney, at 707 Degree of Honor Bldg., Cedar St., St. Paul, Minn. 55101. Attorney for Wozniak and Campbell. Robert T. Holley, 717 S.E. Delaware St., Mpls., Minn. 55440, Attorney for The Minnesota State Board of Medical Examiners. Griffin Bell, Attorney General, U.S. Justice Dept., Washington, D.C. 49149. Elizabeth A. Eagan, U.S. Assistant District Attorney, for the District of Minn. Third Division, 596 Federal Court House, U.S. Justice Dept., Mpls., Minn. 55401.

PLEASE TAKE NOTICE that the above named Plaintiff, Rev. Dianne Fennell, Attorney Pro Se, hereby notify the above named Counselors for the defendants and all parties, in the above case, that she is appealing to the Eight U.S. Circuit Court of Appeals, Judge Donald D. Alsop's Order Dated March 27, 1978, dismissing The Minnesota State Board of Medical

Examiners, and also in which Judge Alsop, ignored Plaintiff's Motion for Summary Judgment, against Defendant, The Minnesota State Board of Medical Examiners, requiring it to issue his Order directing defendant, Minnesota State Board of Medical Examiners, to grant a permanent massage license to plaintiff, which hearing was held on January 6, 1978 and plaintiff requested summary Judgement from defendant Minnesota State Board of Medical Examiners. Also obey Minnesota Statutes Annotated 147.171 (1976), and to grant damages to plaintiff as prayed for in her complaint. Plaintiff further objects to Judge Alsop's deferring issuance of his decision at this time, a delay of 3 months, because he lacks jurisdiction; this case is presently on appeal to the United States Supreme Court.

Dated: April 19, 1978

REV. DIANNE FENNELL
Attorney Pro Se
1612 Randolph Avenue
Saint Paul, Minn. 55105

Filed April 26, 1978.

HARRY A. SIEBEN
Clerk

UNITED STATES COURT OF APPEALS
For the Eighth Circuit
St. Louis, MO 63101
April 28, 1978

Ms. Dianne Fennell
1612 Randolph Avenue
St. Paul, Minnesota 55105

Re: No. 78-1295. *Rev. Dianne Fennell, Appellant* vs. Rosalie Butler, Councilwoman; Donald D. Wozniak; Harriet Lansing, City Attorney; Philip B. Byrne, Deputy City Attorney;

James M. Campbell, *The Minnesota State Board of Medical Examiners,*

Appellee.

Dear Ms. Fennell:

I have your letter of April 24, 1978, enclosing check in the sum of $50.00 to cover docketing fee in this Court in the above case, and receipt therefor is enclosed. The appeal is docketed today under the above number.

The appendix and brief for appellant are due to be served and filed within forty days from this date. By direction of the Judicial Council of the Eighth Circuit, you are hereby notified that the provisions of the Federal Rules of Appellate Procedure as to the times for filing appendix and briefs are to be strictly enforced.

I am directed by the Court to invite your attention to Rules 10(c) and 10(d) of the Federal Rules of Appellate Procedure. The Court expects counsel to make every effort to expedite the submission of this appeal and if recourse to these two rules will facilitate prompt briefing of the case, counsel are urged to adopt the practices outlined in the rules.

Very truly yours,
ROBERT C. TUCKER
Clerk

lp

cc Mr. Robert T. Holley, Special Asst. Attorney General, 232 Minnesota Health Department Bldg., 717 Delaware Street, S.E., Minneapolis 55440; Mr. Harry A. Sieben, Clerk, U.S. District Court, 316 N. Robert St., St. Paul, Minnesota 55101 (3-77-338)

P.S. Mrs. Fennell:

If it is your intention to proceed in accordance with Local Rule 11, you should file a motion to do so promptly.

II.
Affidavit of Arthur W. Poore and its Exhibit Attachments

Affidavit

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

Civil Action File No. 3-77-338

REV. DIANNE FENNELL,

Plaintiff,

vs.

ROSALIE BUTLER, Councilwoman; DONALD D. WOSNIAK; HARRIET LANSING, City Attorney; PHILIP B. BYRNS, Deputy City Attorney; JAMES M. CAMPBELL; and THE MINNESOTA STATE BOARD OF MEDICAL EXAMINERS,

Defendants.

AFFIDAVIT OF ARTHUR W. POORE

State of Minnesota
County of Hennepin—ss.

ARTHUR W. POORE, being first duly sworn upon oath, deposes and says:

1. That he is the Executive Secretary of the Minnesota State Board of Medical Examiners (hereinafter "Board") and has held said position continuously since 1967.

2. That in his capacity as Board Executive Secretary he is the official custodian of all Board massage license and registration records and keeps and maintains such records in the office of the Board.

3. That he has examined and is familiar with all Board records pertaining to applications filed with the Board for massage licensure and registration and with the Board's final actions upon said applications.

4. That, upon information and belief, plaintiff was formerly known as Diane Marie Wincek Saunders.

5. That the hereto attached Exhibit 1 is a true and correct copy of the official original Board record of plaintiff's, by her former name, initial application to the Board for massage registration or licensure and that the date shown thereon of November 20, 1970, is the true date of the Board's approval, upon an interview only and without examination, of plaintiff's initial massage registration application.

6. That the hereto attached Exhibit 2 is a true and correct copy of the official record of the Board's massage registration and licensure book and that it accurately shows, in chronological order of issuance, the pertinent dates associated with Board massage licensure . ' registration, together with the number assigned by the L. 'd to each successful applicant therefor; that Exhibit 2 accurately shov s that plaintiff was not licensed or registered by the Board to practice massage at any time or by any known name before 1970; that Exhibit 2 accurately shows that plaintiff was registered by the Board to practice massage only from 1970 through 1974 and that her assigned registration number was #108.

7. That the hereto attached Exhibits 3, 4, 5, and 6 are true and correct copies of original correspondence between plaintiff and the Board respecting requests by plaintiff in 1977 for the Board's issuance to her of a permanent massage license and the Board's necessary denial of same by reason of plaintiff not having previously been licensed prior to 1967.

8. That written notice of plaintiff's notice of motion and motion for preliminary injunction in the instant matter was

first received by the Board by first class mail on Tuesday, August 23, 1977.

Further affiant saith not.

ARTHUR W. POORE

Subscribed and sworn to before me this 25th day of August, 1977. — Marie B. Tromiczak, Notary Public, Hennepin County, Minnesota. My commission expires October 9, 1980.

EXHIBIT 1

(Exhibit 1 is a reproduction of Rev. Fennell's, the former Dianne Marie Wincek Saunders', initial massage registration application to the Board. Only those portions of the application which include the date of Board approval and the applicant's affidavit are presented here.)

DIANNE SAUNDERS
MINNESOTA STATE BOARD OF
MEDICAL EXAMINERS
496 Lowry Medical Arts Bldg.
St. Paul, Minnesota 55102

Application for Registration to Practice Massage

Name: Dianne Saunders
Preliminary Education: Stanley-Boyud H.S., Stanly, Wis.
Massage Education: Nov. 69 till present at Pam's Sauna
School of Graduation:
Massage Certificate:
Massage Diploma:
Massage Experience: Pam's Sauna, Prior Ave., St. Paul
Application No.: 25
Approval Date: November 20, 1970
Registration No.: 108
Issued: November 20, 1970
Fee Paid: $25.00 Sept. 8, 1970
Receipt No. 9214

AFFIDAVIT OF APPLICANT

State of Minnesota
County of Washington—ss.

Dianne Marie Saunders on being duly sworn, says that he is the person referred to in the above application for registration to practice massage in the State of Minnesota, and that the statements herein contained are each and all strictly true in every respect.

DIANNE SAUNDERS

Sworn to before me this 9th day of September, 1970.—Marian P. Deilke, Notary Public, Washington County. My commission expires March 4, 1977.

EXHIBIT 2

(Exhibit 2 is a reproduction of Board records showing the names and dates of initial application and registration for some 463 state massage registrants through 1974. Only that portion of Exhibit 2 pertinent to the initial application and registration of Rev. Fennell (formerly Dianne Marie Wincek Saunders) is shown here.)

108. Saunders, Diane Marie Wincek (Fennell marr. 1974)

Application Fee	Annual Reg. 1970	Annual Reg. 1971
4/8/70	12/18/70	3/8/71

Annual Reg. 1972	Annual Reg. 1973	Annual Reg. 1974
12/9/71	1/8/73	12/26/73

EXHIBIT 3

June 30, 1977

Chairman
Minnesota Board of Medical Examiners
717 South East Delaware Street
Minneapolis, Minnesota

Re: Application For Permanent License For Practicing Massage (Masseuse).

Dear Sir,

Enclosed is my check in the amount of Twenty-Five ($25.00) Dollars for my Permanent License for Practicing Massage (Masseuse) at my Sauna Parlor known as the "Mistress Sauna Parlor" located at 1612 Randolph Avenue, St. Paul, Minnesota in the County of Ramsey.

I reside at 5870 Tower Drive, Woodbury, Minnesota 55055 in Washington County; and my date of birth is December 10, 1945.

This application is made pursuant to Minnesota Session Laws of 1976 Chapter 222 Section 42.

Thank you.

Sincerely,
REV. DIANNE FENNELL
5870 Tower Drive
Woodbury, Minnesota 55055

Encl. My check $25.00
Massage Reg. No. 108
Dianne Marie-Wincek-Saunders-Fennell
Dianne Marie Wincek Saunders Fennell—Massage Reg. 108
Enc: Copy of my certificate of marriage.

EXHIBIT 4

THE MINNESOTA STATE BOARD OF
MEDICAL EXAMINERS

July 5, 1977

Ms. Dianne Fennell
5870 Tower Drive
Woodbury, Minnesota 55055

Dear Ms. Fennell:

We are returning herein your check in the amount of $25.00 as the Massage Law was abolished by 1974 Minnesota Session Laws Chapter 62 Section 4.

At the present time there is no licensure or registration required by the State Government to practice massage. You should contact the City Licensing Department where you wish to practice.

Sincerely yours,
ARTHUR W. POORE
Executive Secretary

ea
enc.

EXHIBIT 5

July 8, 1977

Arthur W. Poore
Executive Secretary
State Board of Medical Examiners
Room 352, 717 S.E. Delaware
Minneapolis, Minnesota 55414

Re: M.S.A. 171—Licensing of Persons practicing massage, "Minn. Session Laws 1976, C. 222 Section 42, eff. July 1, 1976.

Dear Mr. Poore,

This is to acknowledge your letter of July 5, 1977, indicating I, should contact the city Licensing Department. However Minn. Statutes in reference above indicates the State again has the power to issue license's as of July 1, 1976.

I, am returning my check for Twenty Five Dollars ($25.00), for a License to massage under number (108), my previous license number.

Thank you.

Sincerely yours,
DIANNE FENNELL
5870 Tower Drive
Woodbury, Minn. 55055

enc.

EXHIBIT 6
THE MINNESOTA STATE BOARD OF
MEDICAL EXAMINERS

July 13, 1977

Ms. Dianne Fennell
5870 Tower Drive
Woodbury, Minnesota 55055
Dear Ms. Fennell:

We are again returning your check no. 2202 in the amount of $25.00 which you will find enclosed herein. We cannot reinstate your license to practice massage as the law you refer to pertains only to those persons licensed prior to 1967.

Sincerely yours,
ARTHUR W. POORE
Executive Secretary

ea
enc.

III.
Statutes

Minn. Laws 1935, ch. 245

Section 1. Licenses to practice massage. Masons' Statutes of 1927, Section 5784-16, is hereby amended to read as follows:

'5784-16. The Board shall issue licenses to practice massage only to persons qualified therefore under the provisions of this act after examination as herein provided, upon application in manner and form as prescribed by the Board and payment thereto of a fee of $25.00; provided however that licenses may be renewed by the Board without examination upon application and payment of a renewal fee of *Three Dollars*; and licenses issued pursuant to existing law and outstanding at the time of the passage of this act are hereby continued in force and effect until the same shall expire unless sooner revoked by the Board, as provided for in this act, and shall be renewed by the Board without examination upon application and payment of a renewal fee of *Three Dollars*, except as in this act otherwise provided for; application for renewal of license as herein provided for shall be made to the Board on or before May 31st of each year, and shall be accompanied by the renewal fee of *Three Dollars*; provided, further that the Board in its discretion may without examination upon the payment of a fee of $50.00 issue a license to any person qualified to practice massage in any other state or territory whose requirements for such practice are equivalent to the requirements of this state therefor. Licenses shall be in such form as the Board shall by rule prescribe, shall specify the name, residence and business location of the licensee and state that he is authorized to practice massage in the State of Minnesota; licenses shall bear the date of issuance and the date of expira-

tion thereof and shall be signed by the President and Secretary-Treasurer of the Board and bear its official seal. All licenses shall expire on May 31st next and after the issuance thereof unless sooner revoked as herein provided.'

Minn. Laws 1967, ch. 845

Sec. 4. Minnesota Statutes 1965, Section 148.36, is amended to read:

148.36 Registration, by whom issued. The state board of medical examiners shall ~~issue licenses~~ *register persons* to practice massage only ~~to persons~~ *if they are* qualified therefor under the provisions of sections 148.33 to 148.51 after an ~~examination~~ *interview* as therein provided, upon application in manner and form as prescribed by the board and payment thereto of a fee of $25. ~~Licenses~~ *Registrations* may be renewed by the board without *an* ~~examination~~ *interview* upon application and payment of a renewal fee of $3 ;. ~~and~~ Licenses issued pursuant to existing law and outstanding at the time of the passage of ~~sections 148.33 to 148.51~~ *this act* are hereby continued in force and effect until ~~the same shall expire~~ *May 31, 1967*, unless sooner revoked by the board, as provided for in sections 148.33 to 148.51, and shall be renewed *as a registration* by the board without *an* ~~examination~~ *interview* upon application and payment of a renewal fee of $3 *before May 31, 1967*, except as in sections 148.33 to 148.51 otherwise provided ;. Application for renewal of ~~license~~ *a registration* shall be made to the board on or before ~~May~~ *December* thirty-first of each year and accompanied by the renewal fee of $3. The board, in is *its* discretion, may, ~~without examination~~, upon the payment of a fee of $50, ~~issue a license to~~ *register* any person qualified to practice massage in any other state or territory whose requirements for such

practice are equivalent to the requirements of this state therefor. ~~Licenses~~ *Certificates of registration* shall be in such form as the board shall by rule prescribe, specify the name, residence, and business location of the ~~licensee~~ *registrant*, and state that he is authorized to practice massage in this state; ~~license~~ *they* shall bear the date of issuance and the date of expiration thereof, be signed by the president and secretary-treasurer of the board, and bear its official seal. All ~~licenses~~ *registrations* shall expire on ~~May~~ *December* thirty-first next after the issuance thereof, unless sooner revoked as provided in sections 148.33 to 148.51.